OLC 74-2416
20 November 1974

MEMORANDUM FOR: Legislative Counsel

SUBJECT : Letter to Chairman Holifield regarding H.R. 15577

1. OGC has raised additional objections to the bill (see attached) in response to our request for their views on striking the request for a full exemption.

2. The points raised by OGC are well taken, but we shouldn't consider any further revision of our report for the following reasons based on information provided by the Committee staff:

(a) H.R. 15577 and its companion bill, H.R. 12004, are definitely not being acted upon this Congress.

(b) The Committee will submit a new bill in the next Congress reflecting comments from agencies on H.R. 15577 and H.R. 12004, and it will be an extensive revision.

(c) Our comments on the new bill will be requested, and we can make our points at that time.

3. I suggest that we forward the revised last page of our report in OMB to the Director for his signature.

STATINTL

[redacted]
Assistant Legislative Counsel

Attachment
Distribution:
Orig - Adse/leg. fi.
1 - HGO Committee
1 - Chrono
OLC:PLC:cg (20 Nov 74)

OLC 74-2399
OGC 74-2144

15 November 1974

STATINTL

MEMORANDUM FOR: [redacted]

SUBJECT : Proposed Letter to Chairman Holifield Regarding H.R. 15577

We have some second thoughts on the proposed comments to Chairman Holifield regarding H.R. 15577:

(a) The provision for automatic two-year declassification, in the absence of a personal determination by the Director, seems to me objectionable for reasons far more significant than the fact that this nondelegable power would be an administrative burden on the Director. Automatic declassification after such a short period is simply incompatible with the duties, functions, and operations of an intelligence service. Surely, the Agency will find that potential sources and liaison services will be reluctant to cooperate with us if we are operating in a legal framework where automatic declassification in two years is the expected norm. The Agency's experience under E.O. 11652, which provides for automatic declassification on six, eight, or ten-year periods, is that we exempt virtually all our documents from automatic declassification. If we are correct in that practice, we cannot fail to object to proposed legislation which would declassify at a much earlier time.

(b) It seems to me there are at least two serious objections to the standards for classifying information. One is that, under paragraph 5 at the bottom of page 4, information is to be classified "according to what it contains or reveals" and not on the basis of its relationship to other information or material. I believe we have found it necessary to classify information because of the communication channels in which it is to move, or because of the physical circumstances in which a document may exist, or because of the relationship of information from the document to other information. In addition, the reference in paragraph 6 on page 5 to foreign governments with which the

United States is "allied" may be weak or at best confusing. Are we allied with any government with whom we have a formal treaty, including the Soviet Union? Are we allied only with countries with which we have defense or military pacts? Probably a more careful description of the countries contemplated should be substituted.

(c) I doubt the suggestion in our reply that the provision in the bill for only a single designation of "Secret Defense Data," would increase the cost of protecting and controlling classified material. While the bill does provide that only "Secret Defense Data" shall be used to designate information or material as classified in the interest of national defense, the bill does not prohibit additional designations intended to indicate degrees or kinds of protection to be accorded. Specifically, I should think we and other departments could use the term "Secret Defense Data--Category 1," Category 2, Category 3, etc., and with regulations prescribing graduated degrees of protection for each of the three categories of Secret Defense Data.

(d) The provisions for Comptroller General review also are objectionable. First of all, the functions of the Comptroller General are in mandatory terms. Specifically, they are inconsistent with the concept of Section 8 of the CIA Act, which authorizes expenditures on the certification of the Director without Comptroller General audit. And finally, the intended functions of the Comptroller General would greatly hinder the discharge of the Director's responsibility to protect intelligence sources and methods.

(e) There seem to be some errors in Section 103, which provides for the effective date of the Act. Both subsections (a) and (b) of Section 103 refer to "this title," but the bill has no titles.

STATINTL [redacted]
Associate General Counsel